

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AMERICAN RESIDENTIAL EQUITIES,
LLC,

Plaintiff,

vs.

MORTGAGE SOLUTIONS
MANAGEMENT, INC., a California
corporation, and DOES 1 through 20,
inclusive,

Defendant.

MORTGAGE SOLUTIONS
MANAGEMENT, INC., a California
corporation,

Counter-Claimant,

vs.

AMERICAN RESIDENTIAL EQUITIES,
LLC., a Delaware corporation,

Counter-Defendant.

CASE NO. 07cv425 DMS (LSP)

**ORDER DENYING MOTION TO
DISMISS COUNTER-CLAIM**

Plaintiff American Residential Equities, LLC (“ARE”) has filed a motion to strike the counter-claim of Defendant/Counter-claimant Mortgage Solutions Management, Inc. (“MSM”). The motion was filed on June 1, 2007, and has been fully briefed. The case was taken under submission without oral argument pending the Court’s ruling on MSM’s motion to transfer venue. The motion to transfer

1 venue was denied on September 21, 2007. (Doc. No. 33). For the reasons set forth below, ARE's
 2 motion to strike the counter-claim is denied.

3 **I.**

4 **LEGAL STANDARD**

5 ARE moves to dismiss the counter-claim in its entirety on grounds that MSM has failed to state
 6 a claim for fraud pursuant Federal Rule of Civil Procedure 9(b). Rule 9(b) requires allegations of
 7 fraud to be pled with particularity. Generally, this means the complaining party must allege with
 8 particularity the time, place and content of the false representations, and identify the parties to the
 9 representations. *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007). However, a " pleading is
 10 sufficient under Rule 9(b) if it identifies the circumstances constituting fraud so that the defendant can
 11 prepare an adequate answer from the allegations." *Neubronner v. Milken*, 6 F.3d 666, 671 (9th Cir.
 12 1993).

13 **II.**

14 **DISCUSSION**

15 The Court finds that MSM has met the standard required by Rule 9(b).¹ First, the counter-
 16 claim sufficiently alleges the time of the alleged fraudulent statements. MSM alleges the statements
 17 were made during a "Marketing Campaign" commencing "on or about January 1, 2006 and including
 18 the end of December, 2006." (Cross-Compl. ¶ 6). Identifying a one-year period during which a
 19 specified Marketing Campaign was used by ARE is sufficient.

20 Second, the counter-claim sufficiently alleges the contents of the allegedly false statements.
 21 Paragraph 8, subdivisions (A)-(E), identifies with sufficient particularity the statements made by ARE.
 22 The counter-claim references statements by ARE concerning the ability and skill of ARE to evaluate
 23 portfolios, (Cross-Compl. ¶ 8(A)), ARE's enforcement and repurchase practices, (*Id.* at ¶8(B)), and
 24 quotations of the specific policies of ARE regarding its repurchase and indemnity obligations. (*Id.* at
 25 ¶8(C)).

26 Third, the counter-claim sufficiently alleges where the statements were made. The counter-
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28 ¹ Because the Court finds MSM has adequately stated a claim for fraud under Rule 9(b), the
 balance of ARE's motion as to the remaining claims is denied.

1 claim points specifically to ARE's "Seller Guide," (*Id.* at ¶ 8(C)), ARE's loan purchase agreement,
2 (*id.* at ¶8(B)), and ARE's "contract documents." (*Id.* at ¶ 8(D)). Further, the reference to the 2006
3 Marketing Campaign puts ARE on notice of the documents and circumstances generally giving rise
4 to MSM's fraud claim.

5 Finally, the counter-claim adequately identifies the parties who allegedly made the
6 misrepresentations. "In cases of corporate fraud where the false or misleading information is conveyed
7 in prospectuses, registration statements, annual reports, press releases, or other 'group-published
8 information,' it is reasonable to presume that these are the collective actions of the officers." *Wool*
9 *v. Tandem Computers, Inc.*, 818 F.2d 1433, 1440 (9th Cir. 1987) (*superceded on other grounds*).
10 Since the counter-claim alleges misstatements made in corporate literature, the presumption that the
11 statements in question stem from the collective actions of the officers applies.

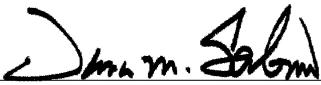
12 **III.**

13 **CONCLUSION**

14 For the foregoing reasons, the motion to dismiss the counter-claim is DENIED. ARE shall file
15 its answer to the counter-claim within 20 days of this "Order" being stamped filed.

16 **IT IS SO ORDERED.**

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18 DATED: September 25, 2007

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HON. DANA M. SABRAW
21 United States District Judge
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